

which it is finally determined that past service of a current or former employee was subject to the higher deduction and Government contribution rates, the Department of Homeland Security must correct the error by submitting the correct amounts (including both employee and agency shares) to OPM as soon as possible. Even if the Department of Homeland Security waives collection of the overpayment of pay under any waiver authority that may be available for this purpose, such as 5 U.S.C. 5584, or otherwise fails to collect the debt, the correct amount must still be submitted to OPM as soon as possible.

(d) Upon proper application from an employee, former employee or eligible survivor of a former employee, the Department of Homeland Security will pay a refund of erroneous additional withholdings for service that is found not to have been covered service. If an individual has paid to OPM a deposit or reposit, including the additional amount required for covered service, and the deposit is later determined to be erroneous because the service was not covered service, OPM will pay the refund, upon proper application, to the individual, without interest.

(e) The additional employee withholding and agency contributions for covered service properly made are not separately refundable, even in the event that the employee or his or her survivor does not qualify for a special annuity computation under 5 U.S.C. 8415(d).

(f) While an employee who does not hold a primary or secondary position is detailed or temporarily promoted to such a position, the additional withholdings and agency contributions will not be made.

(g) While an employee who holds a primary or secondary position is detailed or temporarily promoted to a position that is not a primary or secondary position, the additional withholdings and agency contributions will continue to be made.

§ 842.1006 Mandatory separation.

(a) Except as provided in paragraph (d) of this section, the mandatory separation provisions of 5 U.S.C. 8425 apply to customs and border protection offi-

cers, including those in secondary positions. A mandatory separation under 5 U.S.C. 8425 is not an adverse action under part 752 of this chapter or a removal action under part 359 of this chapter.

(b) Exemptions from mandatory separation are subject to the conditions set forth under 5 U.S.C. 8425. An exemption may be granted at the sole discretion of the head of the employing agency or by the President in accordance with 5 U.S.C. 8425(c).

(c) In the event that an employee is separated mandatorily under 5 U.S.C. 8425, or is separated for optional retirement under 5 U.S.C. 8412(d) or (e), and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position that did not meet the requirements of a primary or secondary position and the conditions set forth in this subpart or, if applicable, in part 831 of this chapter, such separation will be considered erroneous.

(d) The customs and border protection officer mandatory separation provisions of 5 U.S.C. 8425 do not apply to an individual first appointed as a customs and border protection officer before July 6, 2008.

§ 842.1007 Review of decisions.

(a) The final decision of the agency head denying an individual's request for approval of a position as a primary or secondary customs and border protection officer position made under § 842.1003(a) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(b) The final decision of the agency head denying an individual coverage while serving in an approved secondary position because of failure to meet the conditions in § 842.1003(b) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

§ 842.1008 Oversight of coverage determinations.

(a) Upon deciding that a position is a customs and border protection officer, the Department of Homeland Security must notify OPM (Attention: Associate Director, Retirement Services, or such other official as may be designated)